

REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION

In the matter of:

The City of Oxnard

Wastewater Treatment Plant

Order No. R4-2012-0115

(Proposed)

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER; ORDER
(PROPOSED)**

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board), on behalf of the Los Angeles Water Board Prosecution Staff (Prosecution Staff) and the City of Oxnard. (collectively "Parties") and is presented to the Los Angeles Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60 (Stipulated Order).

Section II: RECITALS

1. The City of Oxnard (Permittee) owns and operates the Oxnard Wastewater Treatment Plant (WWTP) located at 6001 South Perkins Road, Oxnard, California, in Ventura County.
2. On May 1, 2008, the Permittee obtained coverage under Los Angeles Water Board Order No. R4-2008-0029, which regulates discharges from the Permittee's WWTP. The City is required to operate and maintain its sewage collection system in compliance with the requirements set forth in Order No. R4-2008-0029.
3. The Prosecution Team alleges that the Permittee violated Prohibitions A, C, and D of Order No. R4-2008-0029 by discharging approximately 104,000 gallons of primary-treated sewage to the Pacific Ocean. The Prosecution Team's allegations are described in detail in Exhibit A, attached hereto and incorporated herein by this reference.
4. The Parties have engaged in settlement negotiations and agree to fully settle certain alleged violations set forth in Exhibit A without administrative or civil litigation and by presenting this Stipulation to the Los Angeles Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The liability imposed by this Order is consistent with a reasonable liability determination using the liability methodology in the Water Quality Enforcement Policy. (See Exhibit A). The Prosecution Team believes that the resolution of the certain alleged violations set forth in Exhibit A is fair and reasonable and fulfills all of its enforcement objectives, that

no further action is warranted concerning those violations, except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

5. To resolve by consent and without further administrative proceedings certain alleged violations set forth in Exhibit A, the Parties have agreed to the imposition of administrative civil liability in the amount of \$17,974.40 against the Permittee, which includes \$1,200 for staff costs.

Section III: STIPULATIONS

The Parties stipulate to the following:

6. **Jurisdiction:** The Parties agree that the Los Angeles Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.

7. **Administrative Civil Liability:** The Permittee shall pay a total of \$17,974.40 in stipulated administrative civil liability by check made payable to the "State Water Pollution Cleanup and Abatement Account," which includes \$1,200 in staff costs, no later than 30 days following the Los Angeles Water Board, or its delegee, executing this Order. The check shall reference the Order number listed on page one of this Stipulation. The original signed check shall be sent to the Regional Water Quality Control Board, Los Angeles Region, 320 W. 4th Street, Suite 200, Los Angeles, California, 90013, with a copy to: David Boyers, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812.

8. **Compliance with Applicable Laws:** The Permittee understands that payment of administrative civil liability in accordance with the terms of this Order and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that future violations of the type alleged in Exhibit A may subject it to further enforcement, including additional administrative civil liability.

9. **Party Contacts for Communications related to this Stipulation and Order:**

For the Los Angeles Water Board:

Hugh Marley, Chief
Compliance and Enforcement
Section
Regional Water Quality Control
Board, Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, California 90013
(213) 620-6375
HMarley@waterboards.ca.gov

For the Permittee:

Mark Moise, Operations Manager
City of Oxnard Wastewater Treatment
Plant
6001 South Perkins Road
Oxnard, California 93033-9047
(805) 488-3517
Mark.Moise@ci.oxnard.ca.us

10. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

11. **Matters Covered by this Stipulation:** Upon adoption by the Los Angeles Water Board, or its delegee, as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in Exhibit A or which could have been asserted based on the specific facts alleged in Exhibit A against the Permittee. The provisions of this Paragraph are expressly conditioned on the Permittee's full payment of administrative civil liability by the deadline specified in Paragraph 7 herein.

12. **Public Notice:** The Permittee and the Los Angeles Water Board Prosecution Team understand that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the Los Angeles Water Board, or its delegee. In the event objections are raised during the public review and comment period, the Los Angeles Water Board or its delegee may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.

13. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Los Angeles Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances. If the Los Angeles Water Board Assistant Executive Officer receives significant new information that reasonably affects the propriety of presenting this Stipulated Order to the Los Angeles Water Board or its delegee for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present the Order to the Los Angeles Water Board. The Permittee agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

14. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Permittee is represented by counsel in this matter.

15. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved the Los Angeles Water Board or its delegee.

16. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Los Angeles Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the

Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Los Angeles Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Los Angeles Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Los Angeles Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged in Exhibit A in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

17. **Waiver of Hearing:** The Permittee has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Los Angeles Water Board prior to the adoption of the Order.

18. **Waiver of Right to Petition:** The Permittee hereby waives its right to petition the Los Angeles Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

19. **The Permittee's Covenant Not to Sue:** The Permittee covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.

20. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

21. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be

binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

22. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Los Angeles Water Board or its delegee, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
Los Angeles Region Prosecution Team**

Date: 8-29-12

By: Paula Rasmussen
**Paula Rasmussen,
Assistant Executive Officer**

City of Oxnard

Date: _____

By: _____
**Thomas E. Holden,
Mayor**

Date: _____

By: _____
**Alan Holmberg,
City Attorney**

binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.


22. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Los Angeles Water Board or its delegee, which incorporates the terms of this Stipulation.

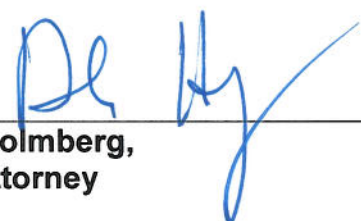
IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
Los Angeles Region Prosecution Team**

Date: _____ By: _____
**Paula Rasmussen,
Assistant Executive Officer**

City of Oxnard

Date: _____ By:  _____
**Thomas E. Holden,
Mayor**

Date: 9-5-12 By:  _____
**Alan Holmberg,
City Attorney**

**HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS,
THE LOS ANGELES WATER BOARD, OR ITS DELEGEE, FINDS THAT:**

23. The Los Angeles Water Board incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 22 above, by this reference, as if set forth fully herein.

24. In accepting this Stipulation, the Los Angeles Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13327 and section 13385, subdivision (e). The Los Angeles Water Board's consideration of these factors is based upon information obtained by the Prosecution Team in investigating the allegations in Exhibit A, or otherwise provided to the Los Angeles Water Board. This settlement recovers the costs incurred by the Prosecution Team in investigating and pursuing enforcement of the allegations set forth in Exhibit A as "other matters as justice may require".

25. This is an action to enforce the laws and regulations administered by the Los Angeles Water Board. The Los Angeles Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

26. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Permittee fails to perform any of its obligations under the Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Los Angeles Region.

Samuel Unger, P.E.
Executive Officer

Date: _____

EXHIBIT A

LOS ANGELES WATER BOARD PROSECUTION STAFF'S ALLEGATIONS AND ENFORCEMENT POLICY METHODOLOGY

1. Prohibition A of Order No. R4-2008-0029 states, "[w]astes discharged from Discharge Serial No. 001 shall be limited to secondary treated wastewater. Discharge of wastewater at a location different from Discharge Serial No. 001 in this Order is prohibited."
2. Prohibition C of Order No. R4-2008-0029 states, "[d]ischarges not specifically authorized under this Order are prohibited."
3. Prohibition D of Order No. R4-2008-0029 states, "[t]he bypass or overflow of untreated wastewater or wastes to surface waters or surface water drainage courses is prohibited, except as allowed in Standard Provision I.G. of Attachment D [to Order No. R4-2008-0029]."

Violation 1:

4. On September 2, 2011, from 5:05 AM to 5:15 AM, a bypass occurred after utility power was lost to the City of Oxnard's (Permittee) Wastewater Treatment Plant (WWTP). During this loss of power, various WWTP systems and backup systems failed:
 - a. The WWTP has cogeneration units that provide approximately half of the WWTP's total power. During the loss of utility power, these units were knocked offline due to a bent pin on one of the main utility breakers. Plant staff was unable to get these units back online until approximately 125 minutes later when utility power was restored.
 - b. At the primary clarifiers, spring operated valve openers failed to open for 15 minutes—preventing excess flow from collecting in an offline primary clarifier used for emergency storage. These valve openers are supposed to open in response to high levels in the primary effluent channel or loss of utility power.
 - c. On a separate power leg, a 1,500 kW emergency diesel engine backup unit started but was initially unable to supply power to the WWTP. Plant staff was able to get this unit to supply power to over half the WWTP after 45 minutes—providing power to the pumps that pump primary-treated effluent to secondary treatment.
5. Because the spring operated valve openers failed to open and the 1,500 kW emergency diesel engine backup failed to provide power to the pumps that pump primary-treated effluent to secondary treatment, approximately 100,000 gallons of primary-treated effluent overflowed into the chlorine contact tank mixing with secondary-treated effluent.
6. Ultimately, the Permittee discharged the commingled effluent to the Pacific Ocean from Outfall No. 001, which is located 5,950 feet offshore of Ormond Beach.

Violation 2:

7. On April 4, 2012, from 8:00 AM to 8:10 AM, another bypass occurred after the WWTP lost utility power. During the loss of power—like the September 2, 2011 bypass event—various systems failed:

- a. The emergency bypass valve opened as designed and sent excess flow to an offline clarifier for emergency storage. However, WWTP staff was unable to repair the emergency power system before primary-treated effluent began spilling over from boltholes in effluent launders, eventually reaching the chlorine contact tank. Approximately 4,000 gallons of primary-treated effluent entered the chlorine contact tank.
- b. The cogeneration units were knocked offline due to a ground fault. The emergency diesel generators were unable to assume the WWTP load because of component failures—in particular, the exciter systems for both diesel generators lost their magnetism, which prevented power generation.

8. Ultimately, the Permittee discharged the commingled effluent to the Pacific Ocean from Outfall No. 001, which is located 5,950 feet offshore of Ormond Beach.

Enforcement Policy Methodology:

The State Water Resources Control Board's Water Quality Enforcement Policy (amended November, 2009)¹ establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in California Water Code section 13385, subdivision (e). The liability methodology spreadsheet presents the administrative civil liability derived from the use of the Enforcement Policy methodology. It is attached hereto as Exhibit B and is incorporated herein by this reference.

STEP 1 – POTENTIAL FOR HARM FOR DISCHARGE VIOLATIONS

VIOLATIONS 1 & 2

Factor 1: Harm or Potential Harm to Beneficial Uses

Violations 1 and 2 address the discharge of primary-treated effluent approximately 5,950 feet offshore from Oxnard WWTP's Outfall No. 001 (including a 1,016 foot diffuser section) to the Pacific Ocean in the *Ventura County Coastal – Offshore Zone*. The Beneficial Uses of *Ventura County Coastal – Offshore Zone* are: NAV, REC1, REC2, COMM, MAR, WILD, RARE, MIGR, SPWN, and SHELL.

Since concentrations of pollutants in primary treated effluent are generally higher than secondary treated effluent, the discharges likely increased loadings of pollutants to the Pacific Ocean. However, no direct evidence (e.g. data, observations, etc.) of impacts has been collected. This lack of evidence of impacts combined with the varied mixing and dilution factors involved in the two discharges make it difficult to quantify appreciable

¹ The Enforcement Policy may be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/policy.shtml

harm to beneficial uses. Therefore, the Los Angeles Water Board Prosecution Team selected a factor of **1**—low threat to beneficial uses.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge

For both Violation 1 and Violation 2, primary effluent commingled with secondary treated effluent prior to disinfection and discharge at the outfall. Due to mixing and dilution factors, it is difficult to estimate the characteristics of the final discharged material. Since the material discharged was not fully treated wastewater, the Los Angeles Water Board Prosecution Team selected a factor of **2**—discharged material poses a moderate risk or threat to potential receptors.

Factor 3: Susceptibility to Cleanup or Abatement

Less than 50 percent of the discharge was susceptible to cleanup or abatement for both violations, therefore the Los Angeles Water Board Prosecution Team selected a factor of **1**.

Final Score – Potential for Harm for Violations 1 and 2

The scores for factor 1 and factor 2 above are added together to determine the “Potential for Harm” score for Violations 1 and 2. Based on the above determinations, the **Potential for Harm** score is **4**.

STEP 2 – ASSESSMENTS FOR DISCHARGE VIOLATIONS

VIOLATION 1

I. Per Gallon Assessment

To calculate the initial liability amount on a per gallon basis, a **Per Gallon Factor** is determined from Table 1 of the Enforcement Policy (page 14) by using the **Potential for Harm** score (step 1) and the extent of **Deviation from Requirement** (minor, moderate, or major) of the violation. The Per Gallon Factor is then multiplied by the number of gallons subject to liability multiplied by the maximum per gallon liability amount.

a. Deviation from Requirement

Order No. R4-2008-0029 contains discharge prohibitions for the discharge of non-secondary treated wastewater and the bypass of untreated wastewater to surface waters. Although the two bypass events that resulted in Violations 1 and 2 each lasted for approximately 10 minutes, they directly violated these prohibitions of the NPDES permit. Therefore, the Los Angeles Water Board Prosecution Team selected a “**moderate**” **Deviation from Requirement**—the intended effectiveness of the requirements has been partially compromised.

b. Per Gallon Factor

Using a Potential for Harm score of “4” and a Deviation from Requirement score of “moderate”, the Los Angeles Water Board Prosecution Team selected a **Per Gallon Factor** of **0.016** from Table 1 of the Enforcement Policy.

c. Maximum per Gallon Liability Amount

The maximum per gallon liability amount allowed under Water Code section 13385, subdivision (c) is **\$10** for each gallon of waste discharged but not cleaned up that exceeds 1,000 gallons.

Using the above information, the Initial Liability assessed per gallon is calculated to be **\$15,840**:

(Per Gallon Factor) x (Gallons subject to liability) x (Maximum per gallon liability amount)

= (0.016) x (99,000 gal) x (\$10.00/gal)

= \$15,840

II. Per Day Assessment

To calculate the initial liability amount on a per day basis, a **Per Day Factor** is determined from Table 2 of the Enforcement Policy (page 15) by using the **Potential for Harm** score (step 1) and the extent of **Deviation from Requirement** (minor, moderate, or major) of the violation. The per day assessment is then calculated by multiplying the Per Day Factor by the maximum per day liability amount allowed under the California Water Code.

a. Per Day Factor

Using a Potential for Harm score of "4" and a Deviation from Requirement score of "moderate", the Los Angeles Water Board Prosecution Team selected a Per Day Factor of **0.016** from Table 2 of the Enforcement Policy.

b. Maximum per Day Liability Amount

The maximum per day liability amount allowed under Water Code section 13385, subdivision (c) is **\$10,000** for each day in which the violation occurs.

Using the above information, the Initial Liability assessed per day is calculated to be **\$160**:

(Per Day Factor) x (Days subject to liability) x (Maximum per day liability amount)

= (0.016) x (1 day) x (\$10,000/day)

= \$160

Initial Assessment for Violation 1

The Initial Assessment for Violation 1 is $\$15,840 + \$160 = \underline{\underline{\$16,000}}$

VIOLATION 2

Because of the similarities between Violations 1 and 2, the assessment for Violation 2 is calculated using the same per gallon and per day factors as Violation 1.

I. Per Gallon Assessment

Using the above information, the Initial Liability assessed per gallon is calculated to be **\$480**:

(Per Gallon Factor) x (Gallons subject to liability) x (Maximum per gallon liability amount)

= (0.016) x (3,000 gal) x (\$10.00/gal)

= \$480

II. Per Day Assessment

Using this information, the Initial Liability assessed per day is calculated to be **\$160**:

(Per Day Factor) x (Days subject to liability) x (Maximum per day liability amount)

= (0.016) x (1 day) x (\$10,000/day)

= \$160

Assessment for Violation 2

The Initial Assessment for Violation 2 is $\$480 + \$160 = \underline{\$640}$

STEP 3 – PER DAY ASSESSMENTS FOR NON-DISCHARGE VIOLATIONS

Not Applicable

STEP 4 – ADJUSTMENT FACTORS

Staff considered certain Permittee Conduct Factors to calculate adjustments to the assessments for Violations 1 and 2:

VIOLATION 1

a. Culpability:

The September 2, 2011 bypass occurred after utility power was lost to the plant, which caused various plant systems and backup systems to fail as described in the allegations.

The WWTP systems should be tested, maintained, and functional during emergencies—especially the loss of utility power. For this reason a factor of **1.0** was selected.

b. Cleanup and Cooperation:

During the September 2, 2011 bypass, WWTP staff attempted to open (manually) the valve to divert the bypass to the offline clarifier and attempted to troubleshoot and repair the emergency 1500 kW diesel generator to make it assume the power load. Following the discharge event, the Permittee reported the incident to Regional Board staff.

On September 8, 2011, Investigative Order No. R4-2011-0146 was issued to the Permittee. The Permittee responded to Order No. R4-2011-0146 and submitted the

required technical report to the Regional Board in a timely manner. Because the Permittee has been cooperative in this matter, the Los Angeles Water Board Prosecution Team selected a factor of **1.0**.

c. History of Violations:

On February 24, 2000, the Chief of the Ventura Coastal Watershed Unit issued the Permittee a staff enforcement letter for the failure to adequately follow-up on unanticipated bypasses at the plant. On March 28, 2000, the Permittee submitted a report that detailed the reasons for past bypass events and outlined preventive measures being undertaken to prevent future bypasses—specifically bypass events due to interruptions of power.

According to information contained in the California Integrated Water Quality Control System (CIWQS), Investigative Order No. R4-2011-0146 was the first enforcement action that specifically addressed bypass events since the February 24, 2000 letter. Given that the Permittee only received one staff enforcement letter 11 years prior to this violation and the purpose of Investigative Order No. R4-2011-0146 was to investigate this violation, the Los Angeles Water Board Prosecution Team selected a factor of **1.0**.

Revised Assessment for Violation 1

The initial assessment for violation 1 is multiplied by the above factors to give a revised assessment of **\$16,000**:

$$\begin{aligned} & (\text{Initial Assessment}) \times (\text{Culpability}) \times (\text{Cleanup and Cooperation}) \times (\text{History}) \\ & = (\$16,000) \times (1.0) \times (1.0) \times (1.0) \\ & = \$16,000 \end{aligned}$$

VIOLATION 2

a. Culpability:

The April 4, 2012 bypass also occurred after the WWTP lost utility power. Because this bypass event was again caused by a failure of the Permittee's emergency systems following the loss of utility power, a higher factor of **1.1** was selected.

b. Cleanup and Cooperation:

During the April 4, 2012 bypass—while attempting to troubleshoot and repair power systems—WWTP staff implemented a dry tablet chlorine system to further chlorinate the effluent in the chlorine contact tank. Following the bypass, the Permittee reported the incident to Regional Board staff.

On April 13, 2012, Investigative Order No. R4-2012-0070 was issued to the Permittee. The Permittee responded to Order No. R4-2012-0070 and submitted the required technical report to the Regional Board in a timely manner. Since the Permittee has been cooperative in this matter, the Los Angeles Water Board Prosecution Team selected a factor of **1.0**.

c. History of Violations:

The April 4, 2012 bypass event occurred less than eight months after the September 2, 2012 bypass event. Given this recent history, the Los Angeles Water Board Prosecution Team selected a factor of 1.1.

Revised Assessment for Violation 2

The initial assessment for Violation 2 is multiplied by the above factors to give a revised assessment of **\$774.40**:

$$\begin{aligned} & (\text{Initial Assessment}) \times (\text{Culpability}) \times (\text{Cleanup and Cooperation}) \times (\text{History}) \\ &= (\$640) \times (1.1) \times (1.0) \times (1.1) \\ &= \$774.40 \end{aligned}$$

STEP 5 – DETERMINATION OF TOTAL BASE LIABILITY AMOUNT

The Total Base Liability Amount is determined by adding the revised amounts for each violation. The **Total Base Liability** is **\$16,774.40**:

$$\begin{aligned} & (\text{Revised Assessment for Viol. 1}) + (\text{Revised Assessment for Viol. 2}) \\ &= (\$16,000) + (\$774.40) \\ &= \$16,774.40 \end{aligned}$$

STEP 6 – ABILITY TO PAY AND ABILITY TO CONTINUE IN BUSINESS

If there is sufficient financial information to assess the violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on the violator's ability to continue in business, the Total Base Liability Amount may be adjusted to address the ability to pay or to continue in business.

The City of Oxnard has a fiscal year 2011-12 adopted budget of \$368.3 million of which \$93,610,718 is allotted to Public Works. To support the financial needs of wastewater treatment the City has a wastewater enterprise fund. Based on the above, the Total Base Liability Amount will not affect the Permittee's ability to continue in business. Accordingly, the Total Base Liability Amount was not adjusted.

STEP 7 – OTHER FACTORS AS JUSTICE MAY REQUIRE

If the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this adjustment. In addition, the costs of investigation and enforcement are "other factors as justice may require," and should be added to the liability amount.

Staff costs incurred by the Los Angeles Water Board Prosecution Team to date are \$1,200. This amount was added to the Total Base Liability Amount, bringing the **adjusted Total Base Liability Amount to \$17,974.40:**

(Total Base Liability) + (Staff Costs)

= (\$16,774.40) + (\$1,200)

= \$17,974.40

STEP 8 – ECONOMIC BENEFIT

The Economic Benefit Amount is any savings or monetary gain derived from the act or omission that constitutes the violation. The Enforcement Policy states that the adjusted Total Base Liability Amount shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.

For calculation purposes for the two violations addressed in this analysis, it is assumed that the Total Base Liability is at least 10 percent higher than any Economic Benefit gained by the Permittee.

STEP 9 – MAXIMUM AND MINIMUM LIABILITY AMOUNTS

The **Minimum Liability Amount** is equivalent to **110 percent of the Economic Benefit** derived from the violation. Pursuant to Water Code section 13385, subdivision (e), the Los Angeles Water Board is required to assess the minimum liability amount for these violations. The Los Angeles Water Board believes that the liability calculated using the Enforcement Policy methodology exceeds this minimum liability amount.

The **Maximum Liability Amount** is **\$1,040,000**. This is determined by first multiplying 102,000 gallons—the number of gallons subject to liability for the two violations—by the maximum \$10 per gallon rate under Water Code Section 13385, subdivision (c). This is then added to the maximum per day liability of \$10,000 per day for two days to give the Maximum Liability.

STEP 10 – FINAL LIABILITY AMOUNT

In accordance with the above methodology, Staff recommends a **Final Liability Amount of \$17,974.40**. This Final Liability Amount is within the statutory minimum and maximum amounts.

Penalty Calculation Methodology Worksheet - Version Date: 6/24/2010
 Password for Workbook Protection: **enforcement**

Instructions

1. Select Potential Harm for Discharge Violations
2. Select Characteristics of the Discharge
3. Select Susceptibility to Cleanup or Abatement
4. Select Deviation from Standard
5. Click "Determine Harm & per Gallon/Day..."
6. Enter Values into the Yellow highlighted fields

Select Item 1 = Minor
 Select Item 2 = Discharged material poses moderate risk
 Select Item < 50% of Discharge Susceptible to Cleanup or Abatement
 Select Item Moderate

Select Item 1 = Minor
 Select Item 2 = Discharged material poses moderate risk
 Select Item < 50% of Discharge Susceptible to Cleanup or Abatement
 Select Item Moderate

Discharger Name/ID:

		Violation 1		Violation 2	
Discharge Violations	Step 1 Potential Harm Factor (Generated from Button)	4		4	
	Step 2 Per Gallon Factor (Generated from Button)	0.016		0.016	
	Gallons	99,000		3,000	
	Statutory / Adjusted Max per Gallon (\$)	10.00		10.00	
	Total		15,840		480
Non-Discharge Violations	Per Day Factor (Generated from Button)	0.016		0.016	
	Days	1		1	
	Statutory Max per Day	10000.00		10000.00	
	Total		160		160
Add'l Factors	Initial Amount of the ACL				
	Step 4 Culpability	1			
	Cleanup and Cooperation	1		1.1	
	History of Violations	1		1	
	Step 5 Total Base Liability Amount		16,000.00		640.00
	Step 6 Ability to Pay & to Continue in Business		16,000.00		704.00
	Step 7 Other Factors as Justice May Require		16,000.00		704.00
	Staff Costs		16,000.00		774.40
	Step 8 Economic Benefit		16,774.40		
	Step 9 Minimum Liability Amount		17,974.40		
	Maximum Liability Amount				
	Step 10 Final Liability Amount		17,974.40		

Penalty Day Range Generator

Start Date of Violation=	
End Date of Violation=	
Maximum Days Fined (Steps 2 & 3) =	Days
Minimum Days Fined (Steps 2 & 3) =	Days